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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,781

04/14/2006

Marcus Eh

51103

3806

1609

7590

05/31/2011

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.

1300 19TH STREET, N.W.

SUITE 600

WASHINGTON,, DC 20036

EXAMINER

BROWN, COURTNEY A

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

05/31/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/575,781	Applicant(s) EH ET AL.
	Examiner COURTNEY BROWN	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/JANET L. EPPS -SMITH/
 Primary Examiner, Art Unit 1633

Continuation of 11. does NOT place the application in condition for allowance because: The examiner maintains the rejection of claims 1-7 and 15-27 under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US Patent 6,627,763 B2, referred to as '763) and /or Anderson et al. (US Patent 6,207,857 B1, referred to as '857) in view of Paget et al. (AU-B-71940/94) and further in view of Schemenger et al. (WO03/017952 A2, see equivalent document, US2004/0098815 A1), Clausen et al. (US 5,879,669) and Tokosh et al. (US 5,895,780) for reasons of record. Applicant's arguments have been fully considered, but are not found persuasive.

Applicant argues that the present invention is directed to a method of releasing a fragrance by providing a fragrance precursor in a stable form and in a stable medium, and treating the formulation to disintegrate and rapidly release the fragrance by the rapid hydrolysis of the compound of Formula I. Applicant argues that the art of record does not disclose or suggest a method for the rapid release of the fragrance of the claimed compound. Applicant argues that the cited patents are specifically directed to the slow release of the fragrance compounds and tailor the structure of the starting compounds to provide the required slow release. However Applicant's arguments are not found persuasive because Anderson '763, discloses an "in situ" generation of the active compounds and according to Webster's Online Dictionary, "In situ" means: in the natural or original position or place. According to Webster's Online Dictionary, "spontaneous": means: 1 : proceeding from natural feeling or native tendency without external constraint ; 2 : arising from a momentary impulse; 3 : controlled and directed internally ; 4 : produced without being planted or without human labor; 5 : developing or occurring without apparent external influence, force, cause, or treatment and 6 : not apparently contrived or manipulated. Thus, the Examiner maintains the position that the "in situ" generation of the active compounds of Anderson et al. is a spontaneous event. Applicant appears to be confusing the word "spontaneous" with "instantaneous" but the two words do not have the same meaning. A spontaneous event can occur in any time frame while an instantaneous event occurs instantly. Regarding Anderson et al. teaching that the compounds of the invention provide a slow release of the active agents (Col. 6 at lines 21-22), it is the Examiner's position that the definition of spontaneous does not have the same meaning of "rapid or fast" but rather "proceeding from natural feeling or native tendency without external constraint" as disclosed by Webster. Thus, the Examiner concludes that Anderson '763 does disclose or suggest spontaneous release because Anderson et al. teach due to the in situ generation of the active compounds as instantly claimed and according to Webster's Online Dictionary, "In situ" means: in the natural or original position or place and "spontaneous": means: 1 : proceeding from natural feeling or native tendency without external constraint. It is duly noted that the claimed method of release and the composition of the prior art is the same as Applicant's. Thus, the skilled artisan would recognize that a composition is inseparable from its properties and when treated in the same manner as instantly claimed, the compounds will spontaneously release a fragrance.

Next, Applicant argues that the cited patents also do not specifically disclose the claimed method for the spontaneous release of the fragrance precursor having the Formula I as recited in the claims in an acidic and oxidative medium having a water content of less than or equal to 10 wt% as in claim 1, or an alkaline medium as in claim 5. However, Applicant's arguments are not persuasive because the secondary teaching of Paget et al. was joined to show that the use of the enol ester of instant compound I was known in the prior art. The Examiner maintains the position that because each reference teaches the use of enol ester compounds that are similar in structure and used as fragrance precursors, the instant claims would have been obvious and that the substitution of one known enol ester compound for another enol ester compound would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Further, '763 teach that under activating conditions, the enol ester compounds of formula (Ia) are cleaved and one or more active compounds with organoleptic and/or antimicrobial properties are generated. '763 teaches that the phrases "activating conditions" or "activated" are used interchangeably and are intended to mean those conditions which lead to cleavage of the compounds and the formation of "active," i.e., organoleptic and/or antimicrobial agents. For example, '763 teach the following activating conditions lead to cleavage of compounds of enol ester compounds of formula (Ia) and to formation of the desired active compounds: skin bacteria, especially axilla bacteria; enzymes such as protease or lipase; elevated temperature; acidic or alkaline pH-values; and/or light. Regarding the amount of water present in the instant sour and oxidative medium, '763 teaches teach water in amounts less than 10% . This includes amounts all the way to 0% (see example 55a and 55b, column 23 bridging to column 24, lines 1-44). One of ordinary skill in the art would have been motivated to utilize water in low amounts based on the teachings of 763 . It would have been obvious to one of ordinary skill in the art at the time of the invention to engage in routine experimentation to determine optimal or workable ranges for water that produce expected results. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Aller, 220 F. 2d 454, 105 USPQ 233 (CCPA 1955). Thus, the rejection is maintained for reasons of record and the foregoing commentary. No new or amended claims have been submitted.

Refer to the Final rejection, mailed on March 15, 2011.

Claims 1-7 and 15-27 remain rejected.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public

PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Fereydoun Sajjadi can be reached on 571-272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Patent Examiner
Technology Center 1600
Group Art Unit 1617.